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endurance, trustworthiness, and cheerful obedience. In this way the group spirit destroys opposition and conflict between crudely individualistic and primitive altruistic tendencies of our nature, thus realizing social harmony.

In part II. the nation is analyzed as a psychological group. National mind lies psychologically between the crowd and the highly organized group, although it is more complex than the latter. Its basis is a certain degree of mental homogeneity, native or acquired. National self-consciousness can develop only as a sentiment. Intercourse, conflict, and competition are necessary to bring out this common sentiment of patriotism. Psychological justification for patriotism lies in the moral value of the group spirit which raises the conduct of the mass of men above the plane of simple egoism or family self-consciousness. Loyalty to a nation is capable of exalting character and conduct in a higher degree than any other form of the group spirit.

Modern communication through the devices of representative government and a party system raises the level of collective mental life above that of the city-state because it permits deliberation without the emotional dangers of assembly.

Part III. deals with the development of national mind and character.

The volume contributes a valuable analysis of the mental life of the group in terms of organized affective dispositions. In applying these principles to the mental life of nations the author tends to glorify the nation without scientifically analyzing it. To scholars familiar with the author's *Social Psychology*, this book is a disappointment.

F. STUART CHAPIN.

Outlines of Historical Jurisprudence. By Sir PAUL VINOGRADOFF, F. B. A., Corpus Professor of Jurisprudence in the University of Oxford. Vol. I. *Introduction; Tribal Law.* (London and New York: Oxford University Press, Humphrey Milford. 1920. Pp. ix, 428. 21s.)

THIRTY years ago Edward A. Freeman wrote privately that he believed a Russian scholar—whom he was just attending on that person's first visit to a court of quarter sessions—was about to achieve remarkable success in the investigation of early English institutions. In 1892 the appearance of Vinogradoff's *Villainage in England* proved that the great historian's faith was well grounded. That masterpiece has been followed by three fruitful decades of special studies, decades which have brought to the sometime foreign student knighthood, an Oxford professorship, and leadership among the world's great juridical thinkers and writers. He now undertakes a much broader and an exceedingly difficult task.

The present volume is devoted to origins—to "Tribal Law"; but the subject is taken up only after an elaborate introduction comprising 160 pages, or more than two-fifths of the entire discussion. Throughout the

work the marginal notes reveal a thorough mastery of a very large though selected literature. English and especially German works are conspicuously cited; while, on some topics, important American contributions are as conspicuously omitted.

The introduction comprises two distinct lines of inquiry, each in four chapters. Part I., "Law and the Sciences", examines the relations of Law and Logic, Law and Psychology, Law and Social Science, and Law and Political Theory. Part II., devoted to "Methods and Schools of Jurisprudence", considers in turn the Rationalists, Nationalists, Evolutionists, and Modern Tendencies in Jurisprudence. The learned author's views and judgments on a great number of vital questions challenge the reader's attention; but lack of space here forbids more than a few brief comments.

The relations of law and logic, as they are exhibited in the rules of evidence and pleading, and the chief fallacies through which the minds of jurors are often ensnared, are set forth with citations of pertinent cases in a way to delight the lawyer and to instruct the layman. Admirable as is the author's analysis of the pervading interrelations of law and psychology, one could have desired a less conservative treatment. For instance, in considering the "modern aspects" of the theory of emotion and instinct, one misses any reference to Trotter's notable investigation of human herd-instinct; and while one is grateful for the helpful discussion of "stages in the development of criminal law", "anthropological researches in criminal law", and the "problems of the policy of punishment", one is disappointed that no direct mention occurs of the rising demand for a radical reform in judicial procedure in order to utilize the accumulating evidence that mental deficiency is the basic cause of a large part of so-called crime. Should not tests of amentia and the psychopathic clinic become the initial stage in trials for crimes? Well says Dr. Parmelee, the American scholar, when "criminal procedure is based on criminal anthropology and sociology, crime will no longer be treated merely as a juridical phenomenon but primarily as an anthropological and social phenomenon".

In his account of the relation of law and the social sciences, Sir Paul crosses ground often trod by writers in recent years, notably by American scholars. On the whole, it cannot be said that he has much broadened our horizon. In particular, his appreciation of recent progress in sociological science seems to be restricted. He appears still to be too much under the sway of Spencer and the "organicists". "In truth," he declares, "apart from the well-known achievements of the great pioneers of the study—A. Comte as to the classification of the sciences and Herbert Spencer as to the application of the principles of physical evolution to social life—the best contributions to general sociology have been obtained by applying purposely one-sided theories to the investigation of society."

To perceive no real advance in general sociology since Comte and Spencer is indeed surprising. Is not the following dictum a bit provincial? "The more or less paradoxical fancies of Lester Ward provide, perhaps, more interesting reading, but the thought which suggests itself forcibly in the perusal of this writer's volumes is that his excursions into all the sciences are the very reverse of careful scientific inquiry: why should such random disquisitions pretend to be contributions to a new science?" Yet, making all due allowance for faulty psychology, it is agreed by the majority of scholars competent to pass judgment that Ward's great achievement is the release of sociology from Spencer's hampering biological method of treatment, and the revelation of it as essentially a psychological study. Hence, more than to any other one writer, credit must be given to Ward for the present marvelous development of sociological thought and its resulting practical applications. He clarified the mental atmosphere which Spencer and the "organicists" had befogged, and disclosed the real contrast between physical and social evolution.

It would be hard to find anywhere so compact and yet so comprehensive an account of the methods and schools of jurisprudence as that which the author has given us. "On the whole," he summarizes, "there can be no doubt that the idea of evolution has had a potent influence on jurisprudential studies"; though he justly protests against the hasty assumption of universal stages of social progress through which all mankind has run, an assumption so often made by German writers. If it be true that "recent developments in the domain of jurisprudence have not yet assumed a sufficiently distinctive character to entitle them to rank as a new epoch in the history of that science", it is not less true that the growing tendency to demand a thorough "socialization" of law deserves more emphatic consideration than one finds in the text. Some recognition of the sociological school of interpretation, of which in the United States Roscoe Pound is leader, would have been appreciated. Witness the revolt against the common-law superstitions of Blackstone and his followers.

Holding that the treatment of the problems of early society is "bound to be *ideological* and not *chronological*", Professor Vinogradoff proceeds to study "*historical types* as the foundation of a theory of law". The development of tribal law is presented in three parts, comprising in all ten chapters. "The Elements of the Family", in three chapters, entitled respectively Selection of Mates, the Mother and the Father, and Relationship and Marriage, is the subject of part I.

In the outset, we are told that the "earliest tribal moulds of society are based on conceptions of relationship and are derived from some form of family organization." Hence the "survey has to start from a study of the *marital union* as the initial institution which brings together and provides for the growth of society". The principal forms of marriage

and the family and the resulting theories to explain them are critically tested, in particular the rival theories of promiscuity or pairing as the original sexual relation. Professor Vinogradoff is not inclined to adopt Westermarck's theory of the pairing family as of general application. "We grant that there is some evidence that the institution of marriage may start from isolated pairs"; but, "considering the immense variety of conditions in ancient times, it is improbable that any exclusive theory will be true in all cases". Dealing as he does in these and some other chapters with materials handled by a host of writers from Bachofen to Westermarck, the author's independent judgments will be received with keen interest by students of early social life. As examples may be mentioned his discussion of the "roots" of exogamous and epigamous unions, and his views on the social status of women under the matrilineal and patrilineal systems. Under the patriarchal system, the fatherhood principle "centres on property"; for the "law of marital union depends less on the law of relationship, not to speak of affection, than on the law of property and authority." In marriage rightly so-called there must be a "contractual element". Marital union is sharply distinguished from marriage. "It is a fundamental fact that there is inherent in our connotation of the term 'marriage' an idea of reciprocal obligation which is not implied in mating or marital union." This distinction gives us the clue to the interesting discussion presented in the chapter on Relationship and Marriage.

Part II., on "Aryan Culture", in four strong chapters, drawn from a wide selection of source-material, considers Aryan Origins, the Patriarchal Household, the Joint Family, and Succession and Inheritance. Here Sir Paul has had the advantage of some of his own earlier special studies. The same is true of the masterly treatment of "Clan and Tribe", to which part III. is devoted. In three chapters, based chiefly though not wholly on a comparison of Roman, Celtic, Teutonic, and especially Anglo-Saxon sources, the text reaches its climax of interest and power. They treat respectively of the Organization of Kinship, Land Tenure, and the Law of the Tribal Federation; but the enlightening discussion may not here be even briefly summarized,

Professor Vinogradoff's book is a notable contribution to juridical literature; and the second volume, on the *Jurisprudence of the Greek City*, will be eagerly awaited.

GEORGE ELLIOTT HOWARD.

Manuel d'Archéologie Romaine. Par R. CAGNAT, Membre de l'Institut, Professeur au Collège de France, et V. CHAPOT, Docteur ès Lettres, Ancien Membre de l'École d'Athènes. Tome Deuxième. *Décoration des Monuments (suite): Peinture et Mosaïque; Instruments de la Vie Publique et Privée.* (Paris: Auguste Picard. 1920. Pp. vi, 574. 30 fr.)